

INTERFERENCE INITIAL MEMORANDUM

Count # _____

BOARD OF PATENT APPEALS AND INTERFERENCES: An interference is found to exist between the following cases:

This interference involves _____ parties

PARTY	APPLICATION NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
If application has been patented, have maintenance fees been paid? _____ Yes _____ No _____ Maintenance fees not due yet				
**Accorded the benefit of:				
COUNTRY	APPLICATION NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
The claim(s) of this party which correspond(s) to this count is(are):				
PATENTED OR PATENTABLE PENDING CLAIMS UNPATENTABLE PENDING CLAIMS				
The claim(s) of this party which does(do) not correspond to this count is(are):				
PATENTED OR PATENTABLE PENDING CLAIMS UNPATENTABLE PENDING CLAIMS				
PARTY	APPLICATION NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
If application has been patented, have maintenance fees been paid? _____ Yes _____ No _____ Maintenance fees not due yet				
**Accorded the benefit of:				
COUNTRY	APPLICATION NO.	FILING DATE	PATENT NO., IF ANY	ISSUE DATE, IF ANY
The claim(s) of this party which correspond(s) to this count is(are):				
PATENTED OR PATENTABLE PENDING CLAIMS UNPATENTABLE PENDING CLAIMS				
The claim(s) of this party which does(do) not correspond to this count is(are):				
PATENTED OR PATENTABLE PENDING CLAIMS UNPATENTABLE PENDING CLAIMS				

Instructions

- For every patent involved in the interference, check if the fees have been paid by contacting the maintenance fees have been paid by using the patent number with PALM screen 2970. If fees are due and they have not been paid, the interference cannot be declared since it would involve an expired patent (35 U.S.C. 135(a); 37 C.F.R. 1.606).
- For each party, separately identify the patentable (or patented) and unpatentable (pending) claims which correspond to the count. (37 C.F.R. 1.601 (f), 1.601 (n), 1.609(b)(2)).
- For each party, separately identify the patentable (or patented) and unpatentable (pending) claims which do not correspond to the count (37 C.F.R. 1.609(b)(3)).
- Forward all files including those the benefit of which is being accorded.
- Keep a copy of the Interference Initial Memorandum and any attachments for your records.

All information requested below must be attached on (a) separate sheet(s) and type-written.

- On a separate sheet, set forth a single proposed interference count. If any claim of any party is exactly the same word for word as this count, please indicate the party, application or patent number, and the claim number.
- For each claim designated as corresponding to the count, provide an explanation of why each claim defines the same patentable invention (37 C.F.R. 1.609(b)(2)).
- For each claim designated as not corresponding to the count, provide an explanation of why each claim defines a separate patentable invention (37 C.F.R. 1.609(b)(3)).
- For each additional count, if any, repeat steps 2-6 and, additionally, provide an explanation why each count represents a separate patentable invention from every other count (37 C.F.R. 1.609(b)(1)).

DATE	PRIMARY EXAMINER (Signature)	TELEPHONE NO.	ART UNIT
DATE	GROUP DIRECTOR SIGNATURE (if required)		

**The application number and filing date of each application the benefit of which is intended to be accorded must be listed. It is not sufficient to merely list the earliest application if there are intervening applications necessary for continuity.

THIS PAGE CAN BE DUPLICATED IF THERE ARE MORE THAN TWO INTERFERING PARTIES.

Revised PTO-850 Interference Initial Memorandum appears on the reverse side of this sheet. This form has been revised to include the changes made to the interference rules as set forth in 1173 OG 49, particularly the changes to 37 C.F.R. § 1.609.

HIGHLIGHTS

1. Maintenance Fees

An interference is an extremely expensive and time consuming proceeding. When a patent is to be involved in an interference, such interference can only be set up with an *unexpired* patent. 35 U.S.C. § 135 and 37 C.F.R. §§ 1.602, 1.606, and 1.607. Since the examiner has the initial responsibility for reviewing the interfering applications and patents, it falls within the responsibility of the Examining Group to insure that the patent in question is in fact unexpired. This requires checking if the proper maintenance fees have been timely paid. Until this is done, the files should not be forwarded for declaration of an interference. The revised form includes instructions on how to verify whether Maintenance Fees for a U.S. Patent have been paid.

2. Explanation of why claims correspond to a count

Section 1.609(b)(2) of 37 C.F.R. requires an examiner's statement explaining why each claim designated as corresponding to a count is directed to the same patentable invention as the count. The purpose of the statement is to provide the Board and the parties involved in the interference with the benefit of the examiner's reasoning while deciding whether the interference should be declared and during consideration of preliminary motions. The reasoning set forth in 37 C.F.R. 1.601(n) must be followed consistent with Office practice for justifying rejections. This information must be typewritten on separate sheets of paper.

3. Explanation of why claims do not correspond to a count

Section 1.609(b)(3) of 37 C.F.R. requires an examiner's statement explaining why each claim designated as not corresponding to *any* count is not directed to the same patentable invention as *any* count. As above, this statement would provide the Board and the parties involved in the interference with the benefit of the examiner's reasoning during consideration of preliminary motions. The reasoning set forth in 37 C.F.R. 1.601(n) must be followed consistent with Office practice for justifying allowances. This information must be typewritten on separate sheets of paper.

4. Multiple Counts

In cases in which multiple counts are involved, 37 C.F.R. 1.609(b)(1) stipulates that the examiner must present reasons why each count is patentably distinct from the other counts. Once more, the reasoning set forth in 37 C.F.R. 1.601(n) must be followed consistent with Office practice for justifying allowances. If the examiner cannot justify the patentability of one count over another count, then they must be considered as directed to the same invention and, thus, only one count would be required for the inter partes proceedings. This information must be typewritten on separate sheets of paper.

If you have any questions concerning the new form or the rule changes, feel free to contact a Program and Resource Administrator at 703-308-9797.